

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: KEVEN MARTIN MILLER,  
  
Debtor.

BKY. No.: 04-50316  
Chapter 13

**NOTICE OF HEARING AND  
MOTION FOR RELIEF  
FROM AUTOMATIC STAY**

-----  
TO: KEVEN MARTIN MILLER AND HIS ATTORNEY, CURTIS K.  
WALKER, ATTORNEY AT LAW, 4356 NICOLLET AVE. S.,  
MINNEAPOLIS, MN 55409.

1. Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., by its undersigned attorneys, Reiter & Schiller, will make a motion for the relief requested below and gives notice of hearing herewith.
2. The Court will hold a hearing on this motion on October 25, 2004 at 10:30 A.M. in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota, or as soon as counsel may be heard before The Honorable Robert J. Kressel, United States Bankruptcy Court Judge.
3. Any response to this motion must be filed and delivered not later October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 14, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

**MOTION TO LIFT AUTOMATIC STAY**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and

1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on March 22, 2004. The case is now pending in this court.

5. This proceeding arises under 11 U.S.C. §362(d)(1), and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9013-1 through 9013-3. Movant requests relief from the automatic stay of 11 U.S.C. §362 with respect to real property as described in Exhibit A hereto of the Debtor that is subject to a perfected security interest in favor of the Movant as shown by the terms of the mortgage and assignment of mortgage, copies of which are attached hereto as Exhibits A & B, respectively.

6. That pursuant to the provisions of 11 U.S.C. §362, the Movant alleges "cause" for relief from the stay and is entitled to relief from the automatic stay inasmuch as:

a) That pursuant to the Chapter 13 Plan confirmed on May 25, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

b) That to date, the Debtor is in default on said payments from August 1, 2004 to date in the amount of \$409.22 per month, plus post-petition late charges and inspection fees.

7. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 U.S.C. §362(a) to allow the Movant to pursue its remedies under state law.

WHEREFORE, Movant, Wells Fargo Bank, N.A. successor by merger to Wells

Fargo Home Mortgage, Inc., by its undersigned attorneys, moves the Court for an Order pursuant to 11 U.S.C. §362(d), granting relief from the automatic stay with respect to the real property securing the Movant's claims to permit the Movant to foreclose its security interest, or in the alternative for such other relief as may be just and equitable.

REITER & SCHILLER

Dated: September 22, 2004

By: /e/Thomas J. Reiter  
Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street  
Second Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262/231605  
(D1940)

**THIS IS A COMMUNICATION FROM A DEBT COLLECTOR.**

# VERIFICATION

I, Karan Abernethy, Bankruptcy Supervisor with Wells Fargo Bank, N. A., declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: September 22, 2004.

WELLS FARGO BANK, N.A.

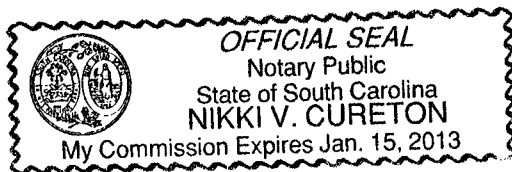
By: Karan Abernethy  
Karan Abernethy

Its: Bankruptcy Supervisor

Subscribed to and sworn before me this

22<sup>nd</sup> day of September, 2004.

Nikki V. Cureton  
Notary Public



REGISTRATION TAX OF \$ 88.09  
PAID January 3, 2000  
RECEIPT NO. 18908  
PHILIP THOMPSON  
MILLE LACS CO. AUDITOR/TREAS.  
BY Shirley Lindberg DEPUTY

OFFICE OF COUNTY RECORDER  
MILLE LACS COUNTY, MINNESOTA  
I HEREBY CERTIFY THAT  
THIS INSTRUMENT # 268164  
WAS FILED/RECORDED IN THIS OFFICE FOR RECORD  
ON THE 03 DAY OF January 2000  
AT 3:15 O'CLOCK P. M.  
SHARON KLEINGARTNER, COUNTY RECORDER  
BY Sandra Kephart DEPUTY  
FEE 19.00 WELL CERT. ---  
REC'D 1-9-00 Rm 4 3:56pm  
RETURN TO: Walsh Title

LOAN NO. 26159

## MORTGAGE

**Walsh** 4210 936  
**Title**

THIS MORTGAGE ("Security Instrument") is given on **DECEMBER 7, 1999**. The mortgagor is **KEVEN M. MILLER, A SINGLE PERSON**

whose address is **249-99TH AVENUE #305  
BLAINE, MN 55434**

("Borrower").

This Security Instrument is given to **LAKELAND MORTGAGE CORPORATION**

which is organized and existing under the laws of **THE STATE OF MINNESOTA**, and whose address is **7801 EAST BUSH LAKE ROAD, STE 130  
BLOOMINGTON, MN 55439**

("Lender").

Borrower owes Lender the principal sum of

**THIRTY-EIGHT THOUSAND TWO HUNDRED FORTY-SEVEN AND 00/100**

Dollars (U.S. \$ **38,247.00**). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on **JANUARY 1, 2030**. This Security Instrument secures to

Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in **MILLE LACS** County, Minnesota:

**LOTS 3, 4, 5 AND 6, BLOCK 7, MILLE LACS, ALSO VACATED ALLEY  
BETWEEN SAID LOTS AND WEST 1/2 OF VACATED NORTH AND SOUTH  
ALLEY ADJOINING SAID LOTS 3 AND 6.**

A

Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument. [Check applicable box(es)]

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider   | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider           | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input type="checkbox"/> Other(s) [specify]      |   |   |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

_____	<u>Kevin M. Miller</u> (Seal)
	-Borrower
_____	_____ (Seal)
	-Borrower
_____	_____ (Seal)
	-Borrower
_____	_____ (Seal)
	-Borrower

(Space Below This Line For Acknowledgment)

STATE OF MINNESOTA,

ANOKA

County ss:

On this 7TH day of DECEMBER, 1999, before me appeared  
KEVEN M. MILLER, A SINGLE PERSON

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that HE executed the same as his/her/their free act and deed.



Chris Gagne

- Notary Public

My Commission expires:

This instrument was prepared by LAKELAND MORTGAGE CORPORATION  
7801 WEST BUSH LAKE ROAD, BLOOMINGTON, MN 55439

OFFICE OF COUNTY RECORDER  
MILLE LACS COUNTY, MINNESOTA  
I HEREBY CERTIFY THAT  
THIS INSTRUMENT # 268165  
WAS FILED/RECORDED IN THIS OFFICE FOR RECORD  
ON THE 03 DAY OF January A.D. 2000  
AT 3:15 O'CLOCK P.  
SHARON KLEIN, COUNTY RECORDER  
BY Sharon Klein DEPUTY  
FEE 19.50 WELL CERT.  
RCN 1/3/00 3:15pm  
RETURN TO: \_\_\_\_\_

### Corporation Assignment of Real Estate Mortgage

PREPARED BY:  
LAKELAND MORTGAGE CORPORATION  
7801 EAST BUSH LAKE ROAD, STE 130  
BLOOMINGTON, MN 55439  
Parcel Tax ID #: 17-560-0170

WHEN RECORDED MAIL TO:  
LAKELAND MORTGAGE CORPORATION  
7801 EAST BUSH LAKE ROAD, STE 130  
BLOOMINGTON, MN 55439  
Loan No.: 26159

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to  
NORWEST MORTGAGE, INC. A CALIFORNIA CORPORATION  
800 LASALLE AVENUE, SUITE 1000, MINNEAPOLIS, MN 55402  
all the rights, title and interest of undersigned in and to that certain Real Estate Mortgage dated  
DECEMBER 7, 1999, executed by KEVEN M. MILLER, A SINGLE PERSON

to LAKELAND MORTGAGE CORPORATION

under the laws of THE STATE OF MINNESOTA and who's principal place of business is  
7801 EAST BUSH LAKE ROAD, STE 130, BLOOMINGTON, MN 55439  
and recorded in Liber page(s) MILLE LACS  
State of MINNESOTA described as follows: DOCUMENT # \_\_\_\_\_ County Records.  
LOTS 3, 4, 5 AND 6, BLOCK 7, MILLE LACS, ALSO VACATED ALLEY  
BETWEEN SAID LOTS AND WEST 1/2 OF VACATED NORTH AND SOUTH  
ALLEY ADJOINING SAID LOTS 3 AND 6.

**Walsh  
Title**  
4210 436

TOGETHER with the Note or Notes therein described or referred to, the money due and to become due  
thereon with interest, and all rights accrued or to accrue under said Real Estate Mortgage.

By: \_\_\_\_\_

Witness: \_\_\_\_\_

Its: LAKELAND MORTGAGE CORPORATION

By: Beth Shoberg  
BETH SHOBERG

Its: ASSISTANT SECRETARY

STATE OF MINNESOTA COUNTY OF HENNEPIN

On DECEMBER 7, 1999 before me, the undersigned, a Notary Public in and for  
said County and State, personally appeared BETH SHOBERG  
known to me to be the ASSISTANT SECRETARY  
and

executed the within instrument, **"NO SEAL"** of the corporation herein which  
that said instrument was signed ~~on behalf of said corporation pursuant to its by-laws~~  
or a resolution of its Board of Directors and that he/she acknowledges said instrument to be the free act and  
deed of said corporation.

My Commission Expires



NEAL T. JOHNSON

NOTARY PUBLIC - MINNESOTA  
My Commission Expires Jan. 31, 2000

Neal T. Johnson  
Notary Public  
County, \_\_\_\_\_

(B)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: KEVEN MARTIN MILLER,  
  
Debtor.

BKY. No.: 04-50316  
Chapter 13

**AFFIDAVIT OF MOVANT'S  
BANKRUPTCY SUPERVISOR**

-----  
STATE OF SOUTH CAROLINA )  
  
COUNTY OF YORK)

Karan Abernethy, being duly sworn on oath states:

1. That I am a Bankruptcy Supervisor in the Bankruptcy Department for Wells Fargo Bank, N.A. in the Fort Mill, South Carolina servicing center. In my capacity as a Bankruptcy Supervisor, I have had the opportunity to review the mortgage account of the Debtor.

2. That pursuant to the Chapter 13 Plan confirmed on May 25, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan.

3. That to date, the Debtor is in default on said payments from August 1, 2004 to date in the amount of \$409.22 per month, plus post-petition late charges and inspection fees.

Further your affiant sayeth naught except that this Affidavit is made in support of the Movant's motion to lift the automatic stay for cause.



WELLS FARGO BANK, N.A.

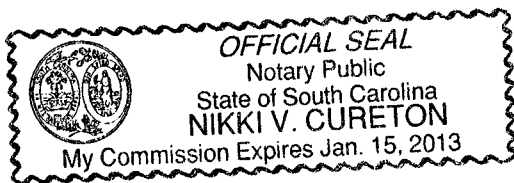
Dated: 9/22/04

By: Karan Abernethy  
Karan Abernethy  
Bankruptcy Supervisor  
3476 Stateview Blvd.  
Fort Mill, SC 29715

Subscribed to and sworn before me this

22<sup>nd</sup> day of September, 2004.

Nikki V. Cureton  
Notary



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: KEVEN MARTIN MILLER,  
  
Debtor.

BKY. No.: 04-50316  
Chapter 13

**MEMORANDUM IN SUPPORT  
OF MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

-----  
**MEMORANDUM OF LAW**

I. Factual Background

The Debtor filed his petition herein on March 22, 2004 under Chapter 13 of the Federal Bankruptcy Code and listed real property located in Mille Lacs County, Minnesota that is subject to a security interest held by Movant. Said real property is legally described as on Exhibit A attached to the Notice of Hearing and Motion for Relief from Automatic Stay.

The amount due under said mortgage loan was approximately \$40,000.00. Pursuant to the Chapter 13 Plan confirmed on May 25, 2004 the Debtor was to make all current monthly payments due on said mortgage outside of the plan. The Debtor is in default on said payments from August 1, 2004 to date in the amount of \$409.22 per month, plus post-petition late charges and inspection fees.

II. Argument

**GOOD CAUSE EXISTS TO GRANT THE MOVANT  
RELIEF FROM THE STAY FOR CAUSE.**

Section 362(d) (1) of the Bankruptcy Code, 11 U.S. C. §362 (d)(1), specifies the following

conditions that must be met in order for a party in interest to be entitled to relief from the automatic stay provisions of that section:

On request of a party in interest and after notice and hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay; for cause, including the lack of adequate protection of an interest in property of such party in interest; or . . .

The Debtor has failed to meet his contractual obligation in making payments as they become due after the filing of this petition, and such a failure constitutes “cause” entitling the Movant to relief from the automatic stay under 11 U.S.C. §362 (d)(1). A continued failure by a debtor to maintain regular payments to a secured creditor is sufficient “cause” to entitle a creditor to relief from stay. In re Whitebread, 18 B.R. 193 (Bkrtcy. D. Minn. 1982); In re Keays, 36 B.R. 1016 (Bkrtcy. E.D. Pa. 1984); In re David, 64 B.R. 358 (Bkrtcy. S.C.N.Y. 1986).

In view of the Debtor’s inability to make payments toward his loan obligation, the Movant's interest in the real property of the Debtor is not adequately protected. A continuing default by the Debtor will impair the Movant's interest without adequate protection or just compensation. The only protection of the Movant's interest proffered by the Debtor is for the Movant to retain its lien awaiting future mortgage payments to be made by the Debtor. The Debtor’s offer of future payments will not provide adequate protection of the Movant's interest and therefore cause exists to terminate the automatic stay.

### **CONCLUSION**

For the reasons stated above, the Movant's motion to terminate the automatic stay should be granted.

REITER & SCHILLER

Dated: September 22, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter  
Rebecca F. Schiller  
Attorneys for Movant  
The Academy Professional Building  
25 North Dale Street  
Second Floor  
St. Paul, MN 55102-2227  
(651) 209-9760  
Attorney Reg. 152262  
(D1940)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: KEVEN MARTIN MILLER,

BKY. No.: 04-50316

Chapter 13

Debtor.  
-----

**UNSWORN DECLARATION FOR PROOF OF SERVICE**

Thomas J. Reiter, an attorney licensed to practice law in this Court, with an office address of The Academy Professional Building, 25 North Dale Street, 2<sup>nd</sup> Floor, St. Paul, MN 55102-2227 declares that on September 27, 2004 he served the annexed Notice of Hearing and Motion, Memorandum, Affidavit and Proposed Order upon each of the individuals named below, to each of them a true and correct copy thereof, enclosed in an envelope, and mailed by First Class Mail with postage prepaid and depositing same in the post office at St. Paul, Minnesota.

Michael J. Farrell  
Trustee  
P.O. Box 519  
Barnesville, MN 56514

United States Trustee  
1015 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

Keven Martin Miller  
39034 Summit Rd.  
Onamia, MN 56359

Curtis K. Walker  
Attorney at Law  
4356 Nicollet Ave. S.  
Minneapolis, MN 55409

Bremer Bank  
26120 3<sup>rd</sup> Street E.  
Zimmerman, MN 55398

And I declare, under penalty of perjury, that the foregoing is true and correct.

REITER & SCHILLER

Dated: September 27, 2004

By: /e/Thomas J. Reiter

Thomas J. Reiter

Attorney at Law

The Academy Professional Building

25 North Dale Street

Second Floor

St. Paul, MN 55102-2227

(651) 209-9760

(D1940)

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA  
FIFTH DIVISION

-----  
In re: KEVEN MARTIN MILLER,  
  
Debtor.

BKY. No.: 04-50316  
Chapter 13

**ORDER TERMINATING STAY**

-----  
This matter came on before the undersigned Judge of the above entitled Court, upon motion filed with the Court on October 25, 2004 in Courtroom No. 2, at the United States Courthouse, at 515 West First Street, in Duluth, Minnesota. The movant, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc., was represented at the hearing by Reiter & Schiller. Other appearances, if any, are noted on the record.

Based upon all the files and proceedings herein, and the Court having considered the arguments of counsel,

IT IS HEREBY ORDERED THAT:

1. The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lots 3, 4, 5 and 6, Block 7, Mille Lacs, also vacated alley between said Lots and West ½ of vacated North and South alley adjoining said Lots 3 and 6, Mille Lacs County, Minnesota.

2. Notwithstanding Fed. R. Bankr. P. 4001 (a) (3), this order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Robert J. Kressel  
Judge of U.S. Bankruptcy Court